

BEFORE THE TENNESSEE STATE DEPARTMENT OF EDUCATION

OFFICE OF LEGAL SERVICES

MAR 11 2005

DIVISION OF
SPECIAL EDUCATION

IN THE MATTER OF:

[REDACTED] student,
[REDACTED] and [REDACTED], parents,
Petitioner

v.

No. 04-63

WILLIAMSON COUNTY
SCHOOLS,
Respondent

FINAL ORDER

William Jay Reynolds
Administrative Law Judge
55 Court Street, Suite A
Savannah, Tennessee 38372

Parents pro se:

[REDACTED]
[REDACTED]
[REDACTED]

Attorney for School District
Mr. Rob Wheeler, Esq.
112 Long Hollow Pike
Suite 208
Goodlettsville, TN 37072

[To protect the confidentiality of the minor student, [REDACTED] will be referred to as "D" on all remaining pages of this Decision.]

Case # 04-63

This Due Process request was received on October 4, 2004 by D. and his parents. The Due Process hearing was held in Franklin, Tennessee on November 8, 2004. As a matter of background it is noted that this is the third Due process hearing that has been requested for D during this calendar year. The first hearing centered generally around the contested placement of D at the Alternative Learning Center after marijuana was found in his truck on school campus. A second hearing was held by this Judge regarding the remanding of D to his zone school at the end of his junior year as a consequence of Board policy regarding Discipline and out of zone transfers. Now comes this third Due Process Hearing regarding the Issues as stated below.

I. Findings of Fact

The student, D. is enrolled in Williamson County School where he is a senior for the 2004 school year. D. is attending Page High School for fall semester, 2004. The IEP Team on August 19, 2004 added Learning Disability to D's categories of Disability.

The Independent Educational Evaluation, a focal point in a previous Due Process Hearing, was given to the school District and it was reviewed by Dr. Janet Anthony, School Psychologist. The IEE was then presented at an IEP where it was considered. (Tr. 74-78).

Joann Gallagher talked with the parent and discussed a means of establishing a way for D to graduate at the conclusion of fall semester, 2004. (Tr. 19). This graduation would take place before D turned 18 in late December. (Tr. 19). The agreement that the

parents and various officials signed on August, 26, 2004 was not part of the IEP process. (Tr. 45). The agreement signed by both parties stated the student would graduate on April 1, 2005. However, the staff and parents believed it to be in the best interest of D to graduate before he turned 18. The parent testified that she believed that D Does not believe that when he turns 18. he has to keep himself enrolled in school and there is the fear that he would leave school before achieving his Diploma. (Tr. 20, 47). D. turns 18 on December 23, 2004. Tr. 19) The Agreement stated that D would be duly enrolled at Page High School and Columbia State College until April 1, 2005. However, Mrs. Hendlmyer, Director of Special Education subsequently sent a letter stating that Dual enrollment could not be accomplished Due to the board policy.

Fall semester, 2004, D. took Theater Arts I, U. S. Government, Consumer Economics, Carpentry, Work-based learning and Senior English. (Tr. 27). Upon successful completion of these courses the student would have met all requirements for graduation. D. had to work extra hard to complete fall semester with the additional work assignments which generally take two semesters, in only one semester. (Tr. 52). D. testified that he was working hard on passing all classes and that if he was forced to return to Ravenwood, he would probably get in trouble. (Tr. 57-59). D. stated he scored 25 on his first attempt to take the ACT. He retook the ACT during the fall semester, 2004. (Tr. 61-62).

Notwithstanding previous Final Orders of this Court, the school District agreed to allow D to remain at Page High School for the remainder of fall semester, 2004. (Tr. 85).

The Hockey club is quasi sponsored by Page High School even though the Club is not recognized as a sport by TSSAA. (Tr. 21-22). The parent agreed that hockey was very important to D. and that the agreement would allow D. not to have to attend Page on a regular basis during the spring semester, 2005. (Tr. 87). Parent testified that she wanted D. to graduate from high school and also be allowed to continue to play hockey. She went as far as to have a letter signed by the head of the Hockey League, Mr. Golfarb, stating D. could continue to play hockey even though he was scheduled to graduate in December 17, 2004. (Tr. 25-26).

II. Issues

1. Whether or not the school District considered the new information, specifically the IEE, which was presented at an IEP meeting.
2. Whether or not the school District used the IEE in making a placement Decision.
3. Whether or not D playing hockey is the Driving force for this Due Process Hearing.
4. When Does D. Graduate?
5. Whether or not Issues # 1 and # 2 constitute res judicata.

III. Law and Argument

The school District is required to provide a Free Appropriate Public Education for each student who is disabled enrolled in schools. The Individuals with Disabilities Education Act Defines free appropriate pubic education as special education and related services which (A) have been provided at public expense, under public supervision and Direction, and without charge, (B) meet the standards of the state education agency. (C) include an appropriate pre-school, elementary, or secondary school education in the state

involved, and (D) are provided in conformity with the individualized education plan required under section 1414 (a) (5) of the Act. (20 USC 1401 et. Seq.) The United States Supreme Court has held that in order to satisfy its Duty to provide a FAPE, a state must provide “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” HenDrick Hudson District Board of Education v. Rowley, 458 U.S. 176 203 (1982).

The school District must consider the results of an Independent Educational Evaluation at an IEP meeting. [34 CFR 300.502(e)(1)] There is no specific Definition of the word, “consider” with respect to an IEE nor is there any weight that must be assigned to the IEE. It would seem the ordinary or plain Definition of “considered” - - - “to reflect on or to think about with some Degree of care or caution” - - - would be appropriate. See T. S. ex rel. S. S. v. Board of Education of the Town of Ridgefield, 20 IDELR 889 (2nd Cir. 1993).

The Agreement made with the parent is not enforceable through a Due Process Hearing. Ordinary contract law would cause the parties to seek relief in a circuit court. (See School Board of Lee County v. M. C. 796 So.2D 581, Fla.2D Dist. Ct. App. 2001. The Court held that circuit court not state administrative hearing officers had jurisdiction over parent’s claim that school board breached settlement agreement concerning special education services)

According to Black’s Law Dictionary, Revised Fourth Edition, the Doctrine of *res judicata* is a termed Defined as “a matter adjudged; a thing judicially acted upon or Decided; a thing or matter settled by judgment.” The courts have recognized and applied concepts of *res judicata* or collateral estoppel in the context of proceedings under the

Individuals with Disabilities Education Act. See Katz v. Timberlane Regional School District, 184 F. Sup.2D 124 (D.N.J. 2002) (state court's rejection of parent's IDEA claims was res judicata, barring relitigation of same claims in federal court); Patricia P. v. Board of Education of Oak Park, 8 F. Supp. 2D 8801 (N.D. Ill. 1998) (claim preclusion [*res judicata*] barred mother from litigation claim for reimbursement of private school expenses where she sought second Due process hearing on her son's placement in a private school, but never sought administrative review of initial Determination that school District offered her son an appropriate IEP under the IDEA); and Independent School District No. 283 v. S.D., 88 F.3D 556 (8th Cir. 1996) (various claims asserted by handicapped child against school District, including claim of alleged failure to provide equal educational opportunity, were precluded under Doctrines of claim preclusion and issue preclusion by IDEA judgment in District's favor.)

IV. Analysis and Conclusions

The school District considered the various parts of the Independent Educational Evaluation at an IEP meeting. The District used various parts of the IEE when refining D's IEP for this year. The law does not require the District to do more than this. It cannot be Determined from the evidence presented if the IEP Team used the IEE to make an educational placement for D. However, since the educational placement has not changed since the last Due Process Hearing, it is a non issue at this time.

From the Discussions and evidence at each and every Due process hearing and at various IEP meetings, it is no secret that this student enjoys the sport of Hockey. However, Hockey is not a recognized sport by TSSAA and therefore is not an issue to be

reckoned with by this Court. But it suffices to say that many arguments would have been more easily disposed of if the parties would have admitted that Hockey is an essential ingredient in the self-esteem of D. and moved on. Whether it is the central issue or not, this Court Does not have to Determine. This Court must assure the student. that he is entitled to a FAPE and the school District is providing it. This is well founded in both hearings that this Court has heard.

The Agreement signed by various parties was not created by an IEP Team and has never been considered by an IEP Team, therefore the Agreement will not be considered in this Final Order. This Court Determines the Agreement Does not have any bearing on this child who is disabled. The IEP Team is the exclusive group given the authority to make educational Decisions regarding a child who is disabled, not a group of teachers, administrators and parents. If the parties wish to have the Agreement enforced they will be required to seek relief in a court of competent jurisdiction.

The school District is responsible for providing FAPE to D. until he has completed the graduation requirements as stated in Tennessee Rules, Regulations and Minimum Standards and Williamson County Board Policies. Upon completion of the requirements, the student graduates as a matter of law. When that occurs Williamson County Schools will not have any further obligations to this student.

Evidence given concerning the Independent Educational Evaluation was handled in Due Process Hearing # 04-40. If the parent's wish to question the Court's ruling, they must seek relief through the appellate process and not attempt to have this Court rehear evidence that has already been ruled on. The payment of the IEE and the educational

placement of D have already been Decided by this Court and thus the issues do in fact become *res judicata*.

This case comes very close to a frivolous law suit as Defined in the 2004 Amendments to the Individuals with Disabilities Education Act. The parent is hereby put on notice that further requests for a Due Process Hearing where the issues have already been tried will test this Court's patience in not declaring the case to be frivolous.

V. ORDER

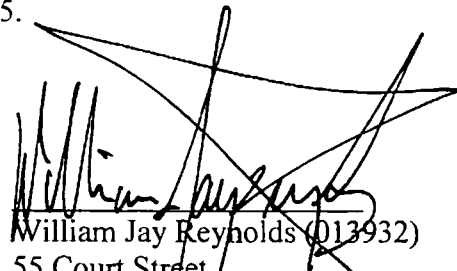
1. IT IS HEREBY ORDERED THAT the school District is ordered to continue to provide a Free Appropriate Public Education until the child has met graduation requirements. Upon meeting graduation requirements, the child shall receive a high school Diploma and will be considered a high school graduate on Williamson County Schools. The school District's obligation ceases upon an award of a high school Diploma.
2. IT IS FURTHER ORDERED the school District is the prevailing party on all issues in this Due Process Hearing.

THIS DECISION IS BINDING UPON ALL PARTIES UNLESS APPEALED. Any party aggrieved by the findings and Decision may appeal to the Davidson County Chancery Court of the State of Tennessee, or the Chancery Court in the county in which the petitioner resides or may seek review in the United States District Court for the district in which the school system is located. Such appeal or review must be sought within sixty (60) days of the date of the entry of a Final Order. In appropriate cases, the

reviewing court may order that this Final Order be stayed pending further hearing in the cause.

If a determination of a hearing officer is not fully complied with or implemented, the aggrieved party may enforce it by a proceeding in the Chancery or Circuit Court, under provisions of Section 49-10-601 of the Tennessee Code Annotated.

ENTERED, this the 4th Day of March, 2005.


William Jay Reynolds (013932)
55 Court Street
Savannah, TN 38372
(901) 925-7000

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Final Order was mailed on the 4th Day of March, 2005 to Counsel for the school District, the parents, and Division of Special Education, State Department of Education, Nashville, Tennessee 37243.